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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN NOE LUEVANOS,

Defendant and Appellant.

F077299

(Super. Ct. Nos. F11906495,  
F11904667)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Michael G. Idiart, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Detjen, J. and Peña, J.

Appointed counsel for defendant Jonathan Noe Luevanos asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

### **BACKGROUND**

On July 31, 2011, in case No. F11904667, defendant was driving with a blood-alcohol concentration of 0.09 percent.

On November 11, 2011, in case No. F11906495, defendant was driving with a blood-alcohol concentration of 0.14 percent.

On January 20, 2012, in case No. F11906495, defendant pled no contest to felony DUI with 0.08 percent or greater blood-alcohol concentration with three or more prior DUI convictions within 10 years (Veh. Code, §§ 23152, subd. (b), 23550, 23550.5, subd. (a)), misdemeanor giving false information to a police officer (Pen. Code, § 148.9, subd. (a)),<sup>1</sup> and misdemeanor driving with a suspended license (Veh. Code, § 14601.1, subd. (a)). Defendant admitted committing a felony while released on bail or his own recognizance (§ 12022.1).

In case No. F11904667, defendant also pled no contest to felony driving under the influence (DUI) with 0.08 percent or greater blood-alcohol concentration with three or more prior DUI convictions within 10 years (Veh. Code, §§ 23152, subd. (b), 23550) and misdemeanor driving with a suspended license (Veh. Code, § 14601.1, subd. (a)).

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

On February 21, 2012, the trial court imposed five years eight months in prison, as follows: in case No. F11906495, the upper term of three years on the DUI, plus two years for the on-bail enhancement, plus eight consecutive months (one-third the midterm) on the DUI in case No. F11904667. The court then suspended execution of sentence and granted defendant three years' probation with 365 days in jail and ordered defendant to complete the Teen Challenge program. The court imposed various fines and fees.

On November 29, 2017, defendant filed a petition requesting that the two felony DUI convictions be reduced to misdemeanors under section 17, subdivision (b) and dismissed under section 1203.4.

On April 2, 2018, the trial court held a hearing on the petitions and found defendant ineligible in either case for relief under section 17, subdivision (b) because the sentencing court had imposed and suspended a prison term. The court did, however, dismiss both cases under section 1203.4.

The same day, defendant filed a notice of appeal in both cases.

### **DISCUSSION**

Defendant's DUI offenses were "wobblers"—offenses punishable as either a felony or a misdemeanor. (Veh. Code, § 23550.) Section 17, subdivision (b) provides, in relevant part: "When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison ... or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] (1) After a judgment imposing a punishment other than imprisonment in the state prison .... [¶] (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor."

When sentence is imposed before probation is granted, section 17, subdivision (b)(3) precludes the court from reducing felonies to misdemeanors. (*People*

*v. Wood* (1998) 62 Cal.App.4th 1262, 1264.) Imposition of a prison term, whether suspended or not, renders the offense a felony. (See *People v. Banks* (1959) 53 Cal.2d 370, 385-386; *Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 137.) Here, the 2012 sentencing court imposed sentence, suspended its execution, and granted probation. The 2018 court considering defendant's petition to reduce the convictions to misdemeanors properly declined to do so.

Having undertaken an examination of the entire record, we find no evidence of ineffective assistance of counsel or any other arguable error that would result in a disposition more favorable to defendant.

#### **DISPOSITION**

The judgment is affirmed.